

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1031 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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GOVNIDBHAI T VAGHELA

Versus

AMRELI MUNICIPALITY  
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Appearance:

MR VH PATEL for Petitioner

MR BK PARIKH for Respondent No. 2  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/06/2000

ORAL JUDGEMENT

#. It is not in dispute that in the seniority list of octroi clerk, name of petitioner is there at sr.no.27 whereas name of respondent No.2 is at sr.no.51. This fact is not disputed by respondents as nobody has filed reply to the special civil application. In paragraph-4

of the special civil application, it is stated by petitioner that he is not only senior most in comparison to respondent No.2, even on merits, the respondent No.2 has no case. Reference has been made to the fact that the municipality has filed criminal complaint against respondent No.2 for misappropriation of municipal funds. This criminal case is filed for offences punishable under sections 408, 409, 467 and 477A of the Indian Penal Code. On the date on which he was given promotion, that case was pending and still he has been given promotion. This fact is also not controverted by respondents. In paragraph-5 the petitioner stated that the service record of the petitioner is unblemished. This has also not been controverted. It is not the case of respondents that the case of petitioner is considered for promotion and he was not found suitable for the same. The respondents have contended that the petitioner was not eligible for promotion as for promotion to the post of Octroi Inspector, minimum educational qualification required is graduate and the petitioner is not graduate. The respondent No.2 has studied upto graduate. From this contention made by learned counsel for the respondent, it is clear that the case of petitioner for promotion have not been considered. However, the learned counsel for respondent No.1 has failed to show any Act, Rule or Standing Order or Regulation or any other decision of the municipality whereunder the service conditions have been laid down, i.e. qualification for appointment on the post of Octroi Inspector by promotion are laid down. In view of these facts, it is difficult to accept that this is the minimum qualification which is to be possessed by the Octroi Clerk for eligibility for promotion to the post of Octroi Inspector. It is a clear case where in violation of provisions of Articles 14 & 16 of the Constitution, promotion has been given to respondent No.2 and which cannot be allowed to stand.

#. In the result, this special civil application succeeds and the same is allowed and it is hereby declared that the promotion given to respondent No.2 without considering the case of petitioner is wholly arbitrary and unjust. The respondent No.1 is directed to consider the case of promotion on the post of Octroi Inspector and after considering the petitioner and other candidates eligible, to decide the matter and where the petitioner is found suitable for promotion, he be given promotion with all consequential benefits from the date of filing of this special civil application, i.e. 12.2.90. Where the petitioner is not found suitable for promotion, a reasoned order be passed and a copy of the same be sent to the petitioner. Rule is made absolute

accordingly. Liberty is granted to the petitioner for revival of this special civil application in case of difficulty. In the facts of this case, no order as to costs.

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(sunil)